

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00
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FM AMEMBASSY LONDON
TO SECSTATE WASHDC IMMEDIATE 1304

C O N F I D E N T I A L SECTION 01 OF 02 LONDON 03783

FOR TRIMBLE (STATE), BLISS (DOT), SCHULTZ (CAB)

E.O. 11652: GDS
TAGS: EAIR, UK
SUBJECT: US-UK CIVAIR NEGOTIATIONS

TRANSMITTED HERewith IS USDEL DRAFT PROPOSED "ADDENDUM TO
AGREEMENT: PROPOSED CAPACITY PROCEDURES." REQUEST FOR
LEGAL REVIEW TRANSMITTED IN SEPTTEL. IN ORDER TO ASSURE
THAT THE PRINCIPLES SET FORTH IN STANDARD BERMUDA ARTICLE
OF THE AIR TRANSPORT AGREEMENT ARE IMPLEMENTED IN A
REASONABLE MANNER, AND IN VIEW OF THE SPECIAL CIRCUM-
STANCES OF NORTH ATLANTIC AIR TRANSPORT, THE FOLLOWING
PROCEDURES SHALL APPLY WITH RESPECT TO CAPACITY OFFERED
ON COMBINATION SERVICES ON NORTH ATLANTIC ROUTES:

1. A DESIGNATED AIRLINE WHICH PLANS TO INCREASE CAPACITY
(FOOTNOTE 1) SHALL SUBMIT SUCH INCREASE TO ITS OWN
GOVERNMENT FOR REVIEW. THAT GOVERNMENT SHALL REVIEW THE
INCREASE IN CAPACITY FOR CONSISTENCY WITH THE AGREEMENT.
IN SUCH REVIEW, IT SHALL TAKE INTO ACCOUNT THE PUBLIC
REQUIREMENT FOR ADEQUATE CAPACITY, THE NEED TO AVOID
UNECONOMIC EXCESS CAPACITY, THE DEVELOPMENT OF ROUTES AND
SERVICES, AND VIABLE AIRLINE OPERATIONS. IF IT CONCLUDES
THAT THE PROPOSED INCREASE IN CAPACITY IS CONSISTENT WITH
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THE AGREEMENT, IT SHALL TRANSMIT A NOTICE OF THE CAPACITY
INCREASE TO THE OTHER GOVERNMENT THROUGH DIPLOMATIC
CHANNELS AT LEAST SIXTY (60) DAYS BEFORE THE EFFECTIVE
DATE OF THE SCHEDULE.

2. IF THE GOVERNMENT RECEIVING SUCH A NOTICE BELIEVES
THAT THE INCREASE IN CAPACITY MAY BE INCONSISTENT WITH TH

AGREEMENT, IT SHALL NOTIFY THE OTHER GOVERNMENT WITHIN FIFTEEN (15) DAYS OF RECEIPT OF THE NOTICE AND GIVE ITS REASONS FOR QUESTIONING THE INCREASE. IF REQUESTED, CONSULTATIONS SHALL BE HELD AS SOON AS POSSIBLE, AND IN NO CASE LATER THAN THIRTY (30) DAYS IN ADVANCE OF THE EFFECTIVE DATE OF THE SCHEDULE. DUE CONSIDERATION SHALL BE GIVEN IN SUCH CONSULTATIONS TO THE CAPACITY OFFERED BY AIRLINES OF THIRD COUNTRIES BETWEEN THE POINTS IN QUESTION. ANY AGREEMENT REACHED IN SUCH CONSULTATIONS SHALL BE PUT INTO EFFECT BY BOTH GOVERNMENTS. IF AGREEMENT IS NOT REACHED, THE SCHEDULE WILL BECOME OPERATIVE ON ITS STATED EFFECTIVE DATE. IN THIS EVENT, THE TWO GOVERNMENT WILL ATTEMPT TO AGREE ON THE RESULTS (FOOTNOTE 2) WHICH THEY EXPECT THE AIRLINE IN QUESTION WILL ACHIEVE FROM THE OPERATION OF THE INCREASE IN CAPACITY DURING THE UPCOMING SEASON. IF THEY CANNOT SO AGREE, THEY WILL RECORD IN A MEMORANDUM THEIR RESPECTIVE POINTS OF VIEW REGARDING SUCH RESULTS. THEY SHALL ALSO MAKE ARRANGEMENTS FOR EXCHANGE DATA NECESSARY TO DETERMINE WHETHER THESE RESULTS HAVE BEEN ACHIEVED.

3. IF THE AIRLINE IN QUESTION ACHIEVED THE RESULTS ESTABLISHED BY AGREEMENT PURSUANT TO PARAGRAPH 2 ABOVE DURING THE SEASON IN QUESTION, THE GOVERNMENT OF THAT AIRLINE SHALL BE FREE TO TRANSMIT TO THE OTHER GOVERNMENT PURSUANT TO PARAGRAPH 1 ABOVE, SUCH INCREASES IN CAPACITY FOR THE NEXT CORRESPONDING SEASON AS IT DEEMS APPROPRIATE. IF, HOWEVER, AGREEMENT ON RESULTS HAS NOT BEEN REACHED PURSUANT TO PARAGRAPH 2 ABOVE, OR IF THE AIRLINE

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IN QUESTION DID NOT ACHIEVE THE RESULTS ESTABLISHED BY AGREEMENT PURSUANT TO PARAGRAPH 2 ABOVE DURING THE SEASON IN QUESTION, THE QUESTIONING GOVERNMENT MAY REQUEST CONSULTATIONS, WHICH SHALL BEGIN AS SOON AS POSSIBLE AFTER THE END OF THE SEASON IN QUESTION. THE TWO GOVERNMENTS SHALL ENDEAVOR TO REACH AGREEMENT IN SUCH CONSULTATIONS ON THE CAPACITY TO BE OPERATED BY THE AIRLINE IN QUESTION DURING THE NEXT CORRESPONDING SEASON. ANY AGREEMENT REACHED IN SUCH CONSULTATIONS SHALL BE PUT INTO EFFECT BY BOTH GOVERNMENTS. IF AGREEMENT CANNOT BE REACHED WITHIN 60 DAYS BEFORE THE NEXT CORRESPONDING SEASON AND IF THE PROPOSED INCREASE IN CAPACITY WAS FULLY OPERATED, THE FOLLOWING PROVISIONS WILL BE APPLIED: (A) IF THE AIRLINE IN QUESTION ACHIEVED THE RESULTS ESTABLISHED BY ITS OWN GOVERNMENT, THAT GOVERNMENT SHALL BE FREE TO TRANSMIT TO THE OTHER GOVERNMENT, PURSUANT TO PARAGRAPH 1 ABOVE, SUCH INCREASES IN CAPACITY FOR THE NEXT CORRESPONDING

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PONDING SEASON AS IT DEEMS APPROPRIATE; (B) IF THE AIR-
LINE IN QUESTION FAILED TO ACHIEVE THE RESULTS ESTABLISH-
ED BY ITS OWN GOVERNMENT, THAT GOVERNMENT SHALL NOT
TRANSMIT TO THE OTHER GOVERNMENT ANY FURTHER INCREASES IN
CAPACITY BETWEEN THE POINTS WHICH WERE CALLED INTO
QUESTION UNDER PARAGRAPH 2 ABOVE FOR THE NEXT CORRESPOND-
ING SEASON. MOREOVER, SUCH AIRLINE MUST SUBMIT TO ITS
OWN GOVERNMENT FOR REVIEW ANY PROPOSED INCREASE IN
CAPACITY BETWEEN THE POINTS WHICH WERE CALLED INTO
QUESTION FOR A PERIOD OF TWO YEARS AFTER THAT NEXT
CORRESPONDING SEASON, NOTWITHSTANDING THE EXCLUSIONS IN
FOOTNOTE 1; (C) IN ADDITION, IF SUCH AIRLINE FAILED TO
ACHIEVE THE REVENUE SEAT FACTOR ESTABLISHED BY ITS OWN
GOVERNMENT BY 10 PERCENT OR MORE, SUCH AIRLINE SHALL
DECREASE ITS CAPACITY BETWEEN THE POINTS IN QUESTION
DURING THE NEXT CORRESPONDING SEASON BY THE PERCENTAGE
BY WHICH THE ACHIEVED SEAT FACTOR WAS LESS THAN THE SEAT
FACTOR ESTABLISHED BY ITS OWN GOVERNMENT; (D) THE FORE-
GOING LIMITATIONS SHALL NOT APPLY IF THIRD COUNTRY AIR-
LINES INCREASED CAPACITY BETWEEN THE POINTS IN QUESTION
DURING THE SEASON UNDER REVIEW BY MORE THAN THE INCREASE
IN CAPACITY BY THE DESIGNATED AIRLINE.

4. THE PROVISIONS OF THIS ADDENDUM SHALL NOT APPLY IN
THE EVENT AN AIRLINE OF EITHER COUNTRY HAS ENTERED INTO
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AGREEMENTS OR ARRANGEMENTS WITH ANY THIRD COUNTRY AIRLINE FOR THE POOLING OF REVENUE OR TRAFFIC OR FOR OTHER FORMS OF COMPENSATION BETWEEN THE POINTS IN QUESTION.

5. IT IS RECOGNIZED THAT THE PROVISIONS OF THIS ADDENDUM MAY NOT BE ADEQUATE IN THE EVENT THERE HAS BEEN A SIGNIFICANT DECLINE IN TOTAL US-UK SCHEDULED REVENUE PASSENGER TRAFFIC OVER MORE THAN ONE SEASON AND THE AIRLINES HAVE NOT VOLUNTARILY RESPONDED TO THIS SITUATION BY DECREASING FREQUENCY OR CAPACITY. UNDER SUCH CIRCUMSTANCES, THE TWO GOVERNMENTS SHALL CONSULT TO CONSIDER APPROPRIATE MEANS TO RESOLVE THE MATTER.

FOOTNOTE 1 - FOR THE PURPOSES OF THIS ADDENDUM, "INCREASE IN CAPACITY" MEANS AN INCREASE IN THE NUMBER OF REGULARLY SCHEDULED SEATS, EXCLUDING EXTRA SECTIONS, AN AIRLINE OF ONE COUNTRY BETWEEN A POINT OF LAST DEPARTURE AND FIRST ARRIVAL IN ITS HOMELAND AND A POINT OR POINTS IN THE TERRITORY OF THE OTHER COUNTRY OR ON AN INTERMEDIATE OR BEYOND SEGMENT OF MORE THAN 15 PERCENT ABOVE THE NUMBER OF SEATS OPERATED BY SUCH AIRLINE BETWEEN THE POINTS IN QUESTION DURING THE PREVIOUS CORRESPONDING SEASON, PROVIDED, HOWEVER, THAT ANY INCREASE IN CAPACITY SHALL BE SUBMITTED FOR REVIEW IF THE TOTAL NUMBER OF REVENUE PASSENGERS BETWEEN THE POINTS IN QUESTION DECLINED BY MORE THAN (BLANK) PERCENT IN THAT PREVIOUS CORRESPONDING SEASON COMPARED WITH THE PRECEDING CORRESPONDING SEASON. EACH DESIGNATED AIRLINE MAY, HOWEVER, OPERATE UP TO 5 ROUNDTRIP FLIGHTS PER WEEK BETWEEN A POINT OF LAST DEPARTURE AND FIRST ARRIVAL AND A POINT OR POINTS IN THE TERRITORY OF THE OTHER COUNTRY WITHOUT SUBMISSION TO, OR REVIEW BY, ITS OWN GOVERNMENT.

FOOTNOTE 2 - SUCH RESULTS SHALL BE EXPRESSED AS AN AVERAGE REVENUE PASSENGER SEAT FACTOR(S) DURING THE SEASON IN QUESTION.

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